UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

CAROL M. BEYER,

Plaintiff

v. Case No. 04-C-00608

LIBERTY LIFE ASSURANCE COMPANY OF BOSTON,

Defendants.

DECISION AND ORDER
GRANTING PLAINTIFF'S MOTION TO FILE AMENDED COMPLAINT, ADDING LIFE INSURANCE PLAN FOR MODINE MANUFACTURING COMPANY SALARIED EMPLOYEES AS A DEFENDANT, AND DEEMING DEFENDANT LIBERTY LIFE ASSURANCE COMPANY OF BOSTON'S ANSWER TO THE PROPOSED AMENDED COMPLAINT AS A TIMELY FILED ANSWER TO THE AMENDED COMPLAINT

Pending before the court is "Plaintiff's Rule 7.4 Expedited Non-Dispositive Motion For Leave To File Amended Complaint". Although the court has not ruled on the motion, defendant Liberty Life Assurance Company of Boston has filed an answer to the proposed amended complaint. Hence, there is no opposition to the plaintiff's request.

Plaintiff seeks leave to amend the complaint to add the Life Insurance Plan for Modine Manufacturing Company Salaried Employees as an additional defendant. Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend by the leave of the court, and leave shall be freely given when justice so requires. Fed. R. Civ. P. 15(a). In addition, Rule 19, which establishes the joinder rule, states in relevant part:

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded

> among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.
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> Fed. R. Civ. P. 19(a).

Plaintiff argues that the Seventh Circuit has indicated that when the ERISA plan and the employing company are closely involved, the employer may be sued instead of or in addition to the plan. *Rivera v. Network Health Plan of Wisconsin, Inc.*, 2003 WL 22794439, p. 8. Thus, it appears that there is just reason for the proposed amendment.

Now, therefore,

IT IS ORDERED that plaintiff's motion to file amended complaint is granted.

IT IS FURTHER ORDERED that Life Insurance Plan for Modine Manufacturing Company Salaried Employees is added as a defendant.

IT IS FURTHER ORDERED that Defendant Liberty Life Assurance Company of Boston's answer to the proposed amended complaint is deemed a timely filed answer to the amended complaint.

Dated at Milwaukee, Wisconsin, this 21st day of April, 2005.

BY THE COURT

s/ C. N. CLEVERT, JR.
C. N. CLEVERT, JR.
U. S. District Judge